The only constitutional limitations upon the right to exclude would seem to be found in the commerce clause, in the right to issue letters patent, and in the omnibus clause, securing the power to enact all necessary laws to carry congressional power into execution. A corporation endowed with federal privileges or engaged in federal business cannot be controlled or regulated by state interference except in the exercise of local police regulations.[8] But by culling expressions from a number of Supreme Court decisions, Mr. Ware has succeeded in enumerating ten limitations. Some of them, based on merest *dicta*, are rejected by the writer. Two, however, merit consideration. One is based on a decision declaring unlawful the arrest of an engineer of a railroad which failed to take out a permit which by its terms became void upon appeal by the corporation, in any litigation, to the federal courts.[9] The generalization drawn, that the burden imposed on a corporation cannot involve the surrender of a right or privilege secured by the Constitution, leaves out of consideration a square holding, which still stands, that though an agreement not to sue in the federal courts is invalid, the state may make the breach of such agreement a ground for revocation of its license, thus giving the corporation the option of not seeking the federal courts or ceasing to do business in that state.[10] The court expressly declared that it could not concern itself with the motive or reasonableness of a state's terms, since the corporation had no constitutional right to do business in the state. Nevertheless, another decision[11] declaring unconstitutional a state provision giving a preference to domestic creditors of an insolvent foreign corporation is deemed, in conjunction with another *dictum*, as, perhaps, committing the Supreme Court to the doctrine that a state cannot exclude a foreign corporation without good reason or just cause. The soundness of the particular decision is, in the light of the vigorous dissent, highly questionable. But certainly it does not warrant, as the writer himself seems to surmise, the conclusion he seeks to draw. On the whole, the narrow, well-defined limitations upon a state's power over foreign corporations can hardly be said to be extended by recent decisions, — a result highly unlikely, whether desirable or not, in view of a want of constitutional justification of the impairment of state sovereignty.

EFFECT OF APPOINTMENT OF RECEIVER ON STATE PRIORITY. — By the common law, the crown was a preferred creditor.[1] Its right of priority, however, was not absolute. It could not be enforced against assets the title to which the debtor had transferred to another before the suing out of the writ of extent (by which the crown's right was enforced), unless, of course, such transfer could be set aside for fraud. Thus it was held that an assignment in trust for the equal benefit of all creditors destroyed the

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[8] Crutcher *v.* Kentucky, 141 U S. 47; Stockton *v.* Baltimore & N. Y. R. Co., 32 Fed. Rep. 9.

[9] Barron *v.* Burnside, 121 U. S. 186.

[10] Doyle *v.* Continental Insurance Co., 94 U. S. 535. See Beale, Foreign Corp. § 122.

[11] Blake *v.* McClung, 172 U. S. 239. See 12 HARV. L. REV. 429.

[1] King *v.* Cotton, Par. 112.

preference.[2] A lien, too, obtained by a third party was secure,[3] but a mere change in custody was of no effect.[4]

In this country there has developed a divergence of opinion among the state courts; some holding that the states, as successors to the sovereignty of the king, became invested with his right of priority;[5] and others repudiating the whole doctrine as inconsistent with our altered political conditions.[6] The courts which do adhere to the rule of state priority subject it to the English restriction that it is liable to be defeated *pro tanto*, by prior legal interests vested in third parties. Thus we find that the leading case on the subject in this country denies the state's claim to preference after an assignment in trust for creditors.[7] And, recently, it has further been held by the supreme court of Maryland that the state's preference did not survive against a receiver in whom the statute[8] vested title to the assets of an insolvent corporation. *State* v. *Williams*, 61 Atl. Rep. 297.

The result then of an action by the state claiming priority against a receiver, in any jurisdiction where the doctrine of state priority is accepted at all, must turn simply upon the question of receiver's title.

Under the old law, no title was vested in any receiver by the order appointing him,[9] for the order issued from a court of equity which had jurisdiction *in personam* only and was therefore incapable of dealing immediately with the title to a *res*. To-day, however, as in the principal case, receivers, and particularly corporation receivers, are by statute invested with title to the debtor's assets from the moment of appointment.[10] Certain text writers might well leave one with an impression that courts of equity now assume to pass title, at least to a debtor's personalty, into the receiver without the assistance of any statute.[11] It is true that some statutes have been held to pass title to personalty only,[12] and that some which do not refer expressly to either personalty or realty have been so broadly construed as to pass title to both by implication.[13] But it is believed that no case goes so far as to hold that a court of equity may, without legislative assistance, vest the receiver with title, save mediately by means of an assignment from the debtor. If, then, in a jurisdiction where the state's right to priority against the original debtor is recognized, the state attempts to obtain a preference against the receiver before an assignment, it must succeed in the absence of some affirmative enactment construed to pass title at the time of appointment.

EXTINGUISHMENT OF RIPARIAN RIGHTS. — To prevent land from being encumbered, the courts generally have established differing rules for the revocation of parol licenses to do acts affecting land interests according

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[2] King *v.* Lee, 6 Price 369.
[3] King (in aid of Braddock) *v.* Watson, 3 Price 6.
[4] *In re* Henley & Co., 9 Ch. D. 469.
[5] Robinson *v.* Bank of Darien, 18 Ga. 65, 96.
[6] Freeholders of Middlesex Co. *v.* State Bank, 30 N. J. Eq. 311.
[7] State of Maryland *v.* Bank of Maryland, 6 Gill & J. (Md.) 205.
[8] Art. 23, § 382, Code of Public and General Laws of Maryland.
[9] Keeney *v.* Home Insurance Co, 71 N. Y. 396.
[10] *Cf. Re* Attorney-General *v.* Atlantic, etc., Co., 100 N. Y. 279.
[11] Alderson on Receivers 211, note 4; Beach on Receivers, 2d ed. 202, note 4; 23 Am. & Eng. Encyc. of Law 1046.
[12] Skinner *v.* Terhune, 45 N. J. Eq. 565.
[13] American National Bank *v.* National, etc., Co., 70 Fed. Rep. 420.